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JOLTID LIMITED

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOLTID LIMITED,

Plaintiff,

vs.

SKYPE TECHNOLOGIES S.A.; SKYPE  
INC.; eBAY INC.; SILVER LAKE  
PARTNERS; INDEX VENTURES  
MANAGEMENT, S.A.; MICHAELANGELO  
("MIKE") VOLPI; ANDREESSEN  
HOROWITZ LLC; CANADA PENSION  
PLAN INVESTMENT BOARD; DOES 1-10,

Defendants.

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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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**SC**

**CV-09**

**4299**

**COMPLAINT FOR COPYRIGHT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

**FAXED**

1 This case involves the impermissible use by the Skype entities, eBay, Michaelangelo Volpi  
 2 and the defendant co-conspirators of Plaintiff's Global Index Software which powers the hugely  
 3 successful Internet telephony application known as Skype. For its complaint against Defendants  
 4 Skype Technologies S.A.; Skype Inc.; eBay, Inc.; Silver Lake Partners; Index Ventures  
 5 Management, S.A.; Michaelangelo Volpi ("Volpi"); Andreessen Horowitz LLC; Canada Pension  
 6 Plan Investment Board; and DOES 1-10 (hereinafter collectively "Defendants"), Plaintiff Joltid  
 7 Limited ("Joltid" or "Plaintiff") alleges as follows:

### 8 SUMMARY OF ACTION

9 1. Joltid, Limited, is a company that develops and provides peer-to-peer based software  
 10 products. As the world's leading developer of peer-to-peer technologies, in 2003 Joltid created a  
 11 new software technology known as Global Index ("GI Software"). The GI Software, Joltid's  
 12 flagship product, is the world's most technologically advanced, scalable and field-tested peer-to-  
 13 peer technology. Peer-to-peer technology involves computer architecture that eschews a central  
 14 database server configuration in favor of a distributed system that harnesses the collective  
 15 computing power of client computers utilizing the Internet worldwide. GI Software creates a self-  
 16 organizing and self-healing distributed storage, transportation and data object management system  
 17 that eliminates the costs of traditional datacenter solutions and enables a range of applications from  
 18 communications to broadcasting and beyond. Joltid owns all intellectual property in the GI  
 19 Software, including copyrights and patents.

20 2. Since the early days of the Internet, engineers recognized that Internet  
 21 communications protocols could be used for voice communications. Engineers named this process  
 22 Voice over Internet Protocol ("VoIP"). IP telephony and Internet telephony are other terms  
 23 frequently encountered and synonymous with VoIP. Internet telephony refers to communications  
 24 services — voice, facsimile, and/or voice-messaging applications — that are transported via the  
 25 Internet rather than through the public switched telephone network ("PSTN"). Most basically, an  
 26 Internet telephone call is achieved by converting an analog voice signal to digital format and then  
 27 compressing and translating that signal into Internet protocol (IP) packets for transmission over the  
 28 Internet. The process is then reversed so the communication can be audibly heard at the receiving

1 end.

2 3. Around 2002, the founders of Skype set out to create a peer-to-peer Internet  
3 telephony system that would deliver telephone service at significantly reduced costs. The founders  
4 subsequently named the resulting Internet telephony application "Skyper" (later changed to  
5 "Skype"), and a company was formed called "Skyper" (later changed to "Skype") to launch the new  
6 peer-to-peer VoIP telephony service.

7 4. Skype developers recognized that Joltid's GI Software would provide the most  
8 effective, and perhaps the only, workable, peer-to-peer infrastructure application for the new  
9 Internet telephony service. In November, 2003, after evaluating and working with Joltid's GI  
10 Software in Skype "Beta" releases, Skype licensed Joltid's GI Software for its new Internet  
11 telephony service ("License Agreement"). Under the License Agreement, Joltid agreed to provide  
12 Skype with the GI Software in "executable" form, together with appropriate interfaces, so that  
13 Skype could build its Internet telephony application on top of the GI Software application base.  
14 Accordingly, Joltid retained sole control over the GI Software source code, and requested  
15 modifications to the GI Software source code could only be made by or at the direction of Joltid.

16 5. Skype offered its application to the public for download in 2003, and it has been  
17 wildly popular ever since. Today, it is estimated that, worldwide, six people every second download  
18 Skype. In 2005, eBay purchased Skype for \$2.6 billion plus an earn out component. At the peak of  
19 each day, more than 16 million users to connect with one another through Skype.

20 6. In 2007, Joltid learned that Skype had acquired unauthorized versions of the GI  
21 Software source code, and subsequently learned that Skype had created unauthorized modifications  
22 of the GI Software source code for new Skype versions. Joltid further learned that Skype had  
23 disclosed the GI Software source code to third persons. Joltid demanded that Skype immediately  
24 return all versions of the GI Software source code, including any modified versions. Skype refused.

25 7. As a result, Joltid terminated the License Agreement with Skype and demanded that  
26 Skype cease using, duplicating, and distributing the GI Software, including making the GI Software  
27 available for download through its Skype application. Despite Joltid's demands, Skype has  
28 continued to make its application available for download, including the GI Software, and has

1 continued to promote Skype downloading unabated. Currently, Joltid believes that its copyrighted  
 2 GI Software, through the activities of the Skype application, is being infringed by those who  
 3 download and use Skype in the United States at least 100,000 times each day.

4 8. On or about September 1, 2009, Joltid learned that an investor group had signed an  
 5 agreement to purchase Skype from eBay. By the terms of the Purchase Agreement, the new owners  
 6 required that Skype continue to make its application, including the GI Software, available for  
 7 download until closing of the deal, expected by year end. The terms of the Purchase Agreement  
 8 thereby contractually required the Skype entities and eBay to continue to infringe Joltid's  
 9 copyrights. Additionally, the Purchase Agreement reportedly provided that certain members of the  
 10 investor group will provide operational control over the Skype Companies until closing, thereby  
 11 making members of the investor group culpable for the ongoing copyright infringement.

12 9. Joltid brings this action for copyright infringement against Skype, its current eBay  
 13 owner, and the new owner/operator investor group to protect its intellectual property rights in the GI  
 14 Software. Joltid seeks actual and statutory damages for infringement (which Joltid reasonably  
 15 believes are amassing at a rate of more than \$75 million daily) and an injunction to stop the  
 16 infringement.

#### 17 **JURISDICTION AND VENUE**

18 10. This is a civil action seeking damages and declaratory and injunctive relief for  
 19 copyright infringement under the Copyright Act, 17 U.S.C. § 101 *et. seq.*

20 11. This Court has original subject matter jurisdiction over all claims pursuant to 28  
 21 U.S.C. §§ 1331 and 1338(a).

22 12. Venue is proper under 28 U.S.C. §§ 1391(b), (c) and (d) and 1400(a).

23 13. This Court has personal jurisdiction over Defendants:

- 24 a. Skype Technologies S.A. conducts continuous and systematic business in  
 25 California and in this District through its website located at  
 26 <http://www.skype.com>. Furthermore, Skype Technologies S.A. negotiated,  
 27 executed and/or caused to be executed agreements relating to the Skype 2009  
 28 sale (collectively, "Skype 2009 Purchase Agreement") in California and in

1 this District.

2 b. Skype, Inc. is a wholly owned subsidiary of Skype Technologies S.A., located  
3 in San Jose, California. Skype, Inc. is a party to the Skype 2009 Purchase  
4 Agreement, and negotiated, executed and/or caused the Skype 2009 Purchase  
5 Agreement to be executed in California and in this District.

6 c. eBay, Inc. ("eBay") conducts continuous and systematic business in  
7 California and in this District, in part through its website located at  
8 <http://www.ebay.com>. eBay maintains an office and employs personnel in  
9 California and in this District, and is licensed by the California Secretary of  
10 State to do business in this State. Furthermore, eBay is a party to the Skype  
11 2009 Purchase Agreement and negotiated, executed and/or caused the  
12 Purchase Agreement to be executed in California and in this District.

13 d. Silver Lake Partners conducts business in California and in this District and  
14 also maintains offices and employs personnel in California and in this  
15 District. Silverlake Partners is a party to the Skype 2009 Purchase Agreement  
16 and negotiated, executed and/or caused the Skype 2009 Purchase Agreement  
17 to be executed in California and in this District.

18 e. Index Ventures Management S.A. ("Index Ventures") is a party to the Skype  
19 2009 Purchase Agreement and negotiated, executed and/or caused the Skype  
20 2009 Purchase Agreement to be executed in California and in this District.

21 f. Michaelangelo Volpi ("Volpi") is a partner with Index Ventures, a party to  
22 the Skype 2009 Purchase Agreement. Volpi, on behalf of himself and Index  
23 Ventures, negotiated, executed and/or caused the Skype 2009 Purchase  
24 Agreement to be executed in California and in this District. Volpi personally  
25 also owns real property in California and in this District.

26 g. Andreessen Horowitz LLC ("Andreessen Horowitz") conducts business in  
27 California and in this District and also maintains offices and employs  
28 personnel in California and in this District. Andreessen Horowitz is a party to

the Skype 2009 Purchase Agreement and negotiated, executed and/or caused the Skype 2009 Purchase Agreement to be executed in California and in this District.

h. Canada Pension Plan Investment Board is a party to the Skype 2009 Purchase Agreement and negotiated, executed and/or caused the Skype 2009 Purchase Agreement to be executed in California and in this District.

### **THE PARTIES**

14. Plaintiff Joltid Limited ("Joltid" or "Plaintiff") is a company duly organized in the British Virgin Islands.

15. Defendant Skype Technologies S.A. is a company duly organized in Luxembourg ("Skype S.A."). Skype S.A. maintains an office located at 22/24 Boulevard Royal, 6e etage, L-2449, Luxembourg. Upon information and belief, Skype S.A. also maintains offices in California.

16. Defendant Skype Inc. is a company duly organized under the laws of the State of Delaware ("Skype Inc."). Skype Inc. maintains its place of business at 2145 Hamilton Ave., San Jose, CA 95125. Collectively, Skype SA and Skype Inc. are referred to as the "Skype Companies."

17. Defendant eBay, Inc. ("eBay") is a corporation duly organized under the laws of the State of Delaware. eBay maintains its principal place of business at 2145 Hamilton Ave., San Jose, CA 95125.

18. Defendant Silverlake Partners is an investment fund with offices located in Cupertino, San Francisco, Menlo Park, and New York, among other locations. Silverlake Partners' Menlo Park office is located at 2775 Sand Hill Road, Suite 100, Menlo Park, CA 94025.

19. Defendant Index Ventures Management S.A. is a venture capital investment firm incorporated in Geneva, Switzerland. Index Ventures maintains offices in Geneva, Switzerland, London, England, and the Bailiwick of Jersey, a British Crown Dependency located in the Channel Islands. Index Ventures manages and operates a compilation of venture capital funds, including three limited partnerships organized under the laws of the State of Delaware: Index Ventures I (Delaware), L.P., Index Ventures II (Delaware), L.P., and Index Ventures III (Delaware), L.P. Index Ventures also manages and operates Index Ventures Growth I, L.P., a member of the investor



1 consortium purchaser of the Skype Companies. Index Ventures' London office is located at 52 53  
2 Conduit Street, London, United Kingdom W1S 2YX.

3 20. Defendant Volpi is a natural person and partner with Index Ventures. Volpi's office  
4 is located at Index Ventures' London office, listed above. Volpi also owns and/or resides at 210  
5 Alta Vista Ave. #8, Los Altos, CA 94022. Volpi also maintains several other addresses in Santa  
6 Clara County.

7 21. Defendant Andreessen Horowitz is a limited liability company duly organized under  
8 the laws of the State of Delaware. Andreessen Horowitz maintains its place of business at 1801  
9 Page Mill Road, Palo Alto, CA 94304.

10 22. Defendant Canada Pension Plan Investment Board ("CPP Investment Board") is  
11 headquartered in Toronto, with offices in London and Hong Kong. The CPP Investment Board  
12 maintains an office at One Queen St. East, Suite 2600, P.O. Box 101, Toronto, Ontario M5C 2W5,  
13 Canada.

14 23. Joltid is ignorant of the true names or capacities of all of the defendants sued herein  
15 under the fictitious names of DOES 1-10. DOES 1-10 are reserved for as yet unnamed and  
16 unknown members of the investor group discussed, in part, in paragraph 8 of this Complaint. The  
17 DOE Members of the investor group, like the named members, are liable for contributory, vicarious  
18 and/or inducing the direct infringement of Joltid's Copyrighted Works by the Skype Companies  
19 and/or unknown users of Skype's software who reproduce Joltid's Copyrighted Works without  
20 authorization by downloading and using the Skype application.

### 21 **PLAINTIFF JOLTID'S COPYRIGHTED WORKS**

22 24. Plaintiff Joltid is the developer and licensor of the intellectual property rights in and  
23 to computer software relating to peer-to-peer communication between computers. One suite of such  
24 computer programs owned by Joltid is known as the "Global Index Software" or "GI".

25 25. Plaintiff Joltid owns all right, title and interest to the United States copyright created  
26 when Joltid's GI Software source code was first created and fixed in tangible form. Joltid's GI  
27 Software source code was first created and fixed in tangible form at least as early as 2003.

28 26. On September 1, 2009, Joltid registered its copyright to Joltid's Global Index

1 Software source code with the United States Copyright Office when it delivered to the United States  
 2 Copyright Office its application, fee and deposit. Attached hereto as Exhibit 1 is a true and correct  
 3 copy of the email from the United States Copyright Office confirming receipt of the application  
 4 filing fee and deposit of Joltid's Global Index Software source code.

5 27. Between 2003 and approximately August 31, 2007, Joltid's Global Index Software  
 6 source code underwent certain modifications ("Modified Global Index Software"). A number of the  
 7 modifications were made under Joltid's authorization and direction at Skype's request. Joltid owns  
 8 all right, title and interest in the United States copyright created when Joltid's Modified Global  
 9 Index Software source code was first created and fixed in tangible form. Joltid's Modified Global  
 10 Index Software source code was first created and fixed in tangible form at least as early as August  
 11 31, 2007.

12 28. On September 15, 2009, Joltid registered its copyright in Joltid's Modified Global  
 13 Index Software source code with the United States Copyright Office when it delivered to the United  
 14 States Copyright Office its application, fee and deposit. Attached hereto as Exhibit 2 is a true and  
 15 correct copy of the email from the United States Copyright Office confirming receipt of the  
 16 application filing fee and deposit of Joltid's Modified Global Index Software source code.

17 29. Under Section 106 of the Copyright Act of 1976, 17 U.S.C. § 101 et. seq. (the  
 18 "Copyright Act"), Plaintiff Joltid has distinct, severable and exclusive rights to, among other things,  
 19 reproduce, prepare derivative works, and distribute their copyrighted works, including Joltid's  
 20 Global Index Software, Joltid's Modified Global Index software source codes, and all object code  
 21 and related data thereof in compiled, assembled, or executable file formats (collectively, the  
 22 "Copyrighted Works"). 17 U.S.C. §§ 106(1)-(3).

### 23 **THE SKYPE COMPANIES' BUSINESS**

24 30. The Defendant Skype Companies provide an Internet telephony software application  
 25 that allows users to, among other things, make voice calls and video calls over the Internet. The  
 26 Skype Companies make its telephony software application available to Internet users (including  
 27 individuals and businesses) for download from websites, one of which Skype operates at  
 28 <http://www.skype.com>.



1 31. Joltid's Copyrighted Works are incorporated into the Skype Companies' telephony  
2 software application and each time a Skype user downloads and/or uses Skype's telephony software  
3 application, the user also downloads and/or uses Joltid's Copyrighted Works.

4 32. The Skype application generates revenue in several ways. Paid monthly  
5 subscriptions enable a Skype user to make calls using the Skype application. Subscriptions range  
6 from \$2.95 per month for unlimited calls within the United States and Canada, up to \$12.95 a month  
7 for unlimited world calls. A Skype user can also purchase "Skype Credits" which can be used on an  
8 as-needed basis. Skype also generates revenue from the sale of products on its websites, including  
9 www.skype.com. Products sold through Skype include accessories such as phones, web cams and  
10 headsets, as well as the sale of so-called "extras", such as facsimile add-ons, call recorders, games,  
11 applications, images, ring tones, etc. Skype also generates revenue through sponsored advertising  
12 and partnerships.

13 33. Skype's telephony software application is ultimately responsible for all of the  
14 revenue received by the Skype Companies. In short, without Skype's telephony software  
15 application drawing users and potential users to Skype's websites, the Skype Companies would  
16 receive little or no revenue.

17 **THE SKYPE COMPANIES' UNAUTHORIZED AND INFRINGING**  
18 **USES OF JOLTID'S COPYRIGHTED WORKS**

19 34. Because Joltid's Copyrighted Works are proprietary and subject to intellectual  
20 property rights owned by Joltid, in November of 2003, the Skype Companies executed an agreement  
21 to license Joltid's Copyrighted Works, as well as other intellectual property rights owned or  
22 controlled by Joltid. The November 20, 2003 Joltid Global Index Software License Agreement  
23 ("License Agreement") between Skype and Joltid provided the terms under which Skype could  
24 permissibly use Joltid's intellectual property rights, including Joltid's Copyrighted Works, for use in  
25 Skype's business.

26 35. The License Agreement between Joltid and Skype licensed Skype to use the object  
27 code of the Copyrighted Works in executable form only. This means that the Skype Companies  
28 could only create software that uses the Joltid's Copyrighted Works, in its existing form, much like

1 a software developer can obtain permission to write program that run on the Microsoft Windows  
2 platform without receiving the right to change the Windows application. The License Agreement  
3 did not allow Skype itself to copy, distribute, modify or use the source code relating to any version  
4 of Joltid's Copyrighted Works. To the extent Skype required modifications of the GI code, all such  
5 requests for modifications were to be made to and authorized by Joltid and its software contractors.

6 36. Despite the requirements of the License Agreement, Skype used the source code  
7 relating to Joltid's Copyrighted Works in manners unauthorized by Joltid. Skype's unauthorized  
8 uses of Joltid's Copyrighted Works included the unauthorized distribution of Joltid's Copyrighted  
9 Works by making Skype's telephony software application (including Joltid's Copyrighted Works)  
10 available to third parties. Additionally, Skype prepared derivative works based upon Joltid's  
11 Copyrighted Works by modifying Joltid's Copyrighted Works without permission and distributing  
12 and reproducing the derivative works. Skype further obtained and made copies of the source code  
13 for Joltid's Copyrighted Works. Skype was notified multiple times by Joltid that its unauthorized  
14 uses of Joltid's Copyrighted Works were in contravention to the License Agreement and that such  
15 uses should be terminated. Throughout the latter part of 2007, Joltid wrote to Skype, informing  
16 Skype that Joltid had not authorized possession of Joltid's Copyrighted Works and furthermore  
17 specifically instructed Skype that it could not disclose Joltid's Copyrighted Works to third parties.  
18 Despite Joltid's express instructions, Skype continued its unauthorized acts, including the disclosure  
19 of Joltid's Copyrighted Works to third parties and the modification of the Copyrighted Works  
20 without Joltid's permission.

21 37. As a result of Skype's unauthorized uses of Joltid's Copyrighted Works, Joltid  
22 terminated the License Agreement in accordance with its terms.

23 38. The termination of the License Agreement was effective as of March 12, 2009. Since  
24 that date the Skype Companies use, reproduction, distribution and preparation and modification of  
25 Joltid's Copyrighted Works has continued without permission or license.

26 39. Skype's breach of the License Agreement and the legal effect of Joltid's termination  
27 of the License Agreement is currently the subject of litigation in the United Kingdom High Court of  
28 Justice, Chancery Division Intellectual Property, in a matter styled as *Skype Technologies SA and*

1 *Joltid Limited*, Claim No. HC09C00756 (the “U.K. Litigation”).

2 40. Prior to and since March 12, 2009, Skype has continued to make its telephony  
3 software application, which includes Joltid’s Copyrighted Works, available to the public. As a  
4 result, Skype has reproduced Joltid’s Copyrighted Works without authority to do so by, among other  
5 things, incorporating the Copyrighted Works into Skype’s Internet telephony software application  
6 and making the Skype Internet telephony software available to third parties for download and use.  
7 Additionally, Skype continues to prepare derivative works based upon Joltid’s Copyrighted Works  
8 by modifying Joltid’s Copyrighted Works without permission and both distributing and reproducing  
9 those derivative works.

10 41. When the Skype Companies offer the Skype application to a consumer, that user  
11 consents to Skype’s End User License Agreement.

12 42. Skype’s End User License Agreement purports to, without authority, grant licenses to  
13 certain of Plaintiff’s Copyrighted Works – namely, the GI object code. The End User License  
14 Agreement grants Skype’s users limited, personal, non-commercial, non-exclusive, non-  
15 sublicensable, non-assignable, free of charge license to download, install and use the Skype  
16 telephony application (and any software distributed by Skype) on the user’s computer, phone or  
17 PDA. The End User License Agreement contains no exception to the object code format of  
18 Plaintiff’s Copyrighted Works and in fact states that third party software or technology that is  
19 incorporated into the Skype telephony application falls under the scope of the End User License  
20 Agreement.

21 43. The Skype Companies continue to promote the use and downloading of Skype’s  
22 telephony software to registered and potential users. Skype maintains and promotes an “Affiliate  
23 Program” wherein individuals and/or businesses can make money by directing traffic to Skype. As  
24 an addendum to its End User License Agreement, in a document entitled “Promotional Terms,” the  
25 Skype Companies granted an automatic non-transferable license so that users or others may promote  
26 Skype, Skype’s telephony software, Skype’s website, or other Skype products on their own  
27 websites.

28 **DEFENDANT EBAY AND ITS PURCHASE OF THE SKYPE COMPANIES**

1           44. Based in part on the Skype application's early popularity, Defendant eBay, the well-  
2 known online auctioneer and owner of Pay-Pal, saw great value in Skype. Hoping to enhance the  
3 auction experience of its eBay application by facilitating low-cost or cost-free communication  
4 between sellers and potential buyers of auction items on eBay, eBay purchased the Skype  
5 Companies, together with the Skype Internet telephony software, in October 2005, for \$2.6 billion  
6 plus an earn-out. As a result of the purchase, the Skype Companies became wholly owned  
7 subsidiaries of Defendant eBay and remained under the complete control and direction of  
8 Defendant eBay.

9           45. As part of the negotiations for the purchase of the Skype Companies, eBay sought to  
10 purchase Joltid. Alternatively, eBay sought to purchase or license Joltid's GI source code. Joltid  
11 declined to either sell its intellectual property rights in GI or to sell or license the GI source code.  
12 Accordingly, eBay purchased the Skype Companies subject to the terms of the License Agreement  
13 that then existed between the Skype Companies and Joltid, which remained a license limited to  
14 executable GI object code. The later breach of the License Agreement by the Skype Companies  
15 directed by eBay amounted to a unilateral confiscation of the same code that Joltid had earlier  
16 refused to sell to eBay.

17           46. Defendant eBay reports on the Skype Companies' operations in its public filings with  
18 the Securities and Exchange Commission ("SEC"). eBay describes the Skype Companies as the  
19 "Communications" branch of eBay's business. Furthermore, eBay publicly states in its SEC filings  
20 that eBay launched several promotions with Skype, "which drove significant user growth in  
21 registered users."

22           47. Skype's telephony software application has become hugely popular. From 2003 to  
23 2008, registered Skype users have reached over 405 million in number, with some sources  
24 (including Wikipedia) estimating the number of users currently as high as 481 million. As a result  
25 of eBay's strong oversight and control over its investment, registered Skype users increased 47  
26 percent between 2007 and 2008 alone. eBay press releases boast that "Skype is attracting hundreds  
27 of thousands of new users each week." Skype itself claims that approximately 6 new users register  
28 and download Skype's telephony software application (and, consequently, Joltid's Copyrighted

1 Works) every second of every day.

2 48. As a result of the success of the Skype telephony software application (including  
3 Joltid's Copyrighted Works), Skype is hugely profitable, generating a significant portion of eBay's  
4 total revenue. eBay press releases state that "Skype generated revenues of \$551 million, a 44  
5 percent increase compared to 2007. Total eBay Inc. revenues for 2008 were \$8.5 billion." eBay  
6 publicly anticipates Skype to generate one billion dollars in revenue in the year 2011.

7 49. At all times since October, 2005 up to, and including September 1, 2009, Defendant  
8 eBay, as Skype's sole shareholder, exercised full operational control over Skype's unauthorized  
9 reproduction, distribution, preparation of derivative works and/or modifications of Joltid's  
10 Copyrighted Works. As sole shareholder of Skype, and having conducted extensive due diligence  
11 into Skype's business activities and licensing agreements in preparation for its more than three  
12 billion dollar acquisition of Skype, Defendant eBay was at all times aware of Skype's unauthorized  
13 and infringing uses of Joltid's Copyrighted Works.

14 50. In fact, early on eBay recognized the importance of Joltid's Copyrighted Works in  
15 Skype's telephony software application, stating in an SEC filing that "Skype licenses technology  
16 underlying certain key components of its software from third parties it does not control, including  
17 the technology underlying its peer-to-peer architecture and firewall traversal technology, and the  
18 audio and video compression/decompression used to provide high sound and video quality.  
19 Although Skype has contracts in place with its third party technology providers, there can be no  
20 assurance that the licensed technology or other technology that we may seek to license in the future  
21 will continue to be available on commercially reasonable terms, or at all. The loss of, or inability to  
22 maintain, existing licenses could result in a decrease in service quality until equivalent technology or  
23 suitable alternatives can be developed, identified, licensed and integrated. Any failure to maintain  
24 these licenses on commercially reasonable terms or to license or develop alternative technologies  
25 would harm Skype's business."

26 51. Later, recognizing the importance of Joltid's Copyrighted Works in Skype's  
27 telephony software application and eBay's liability exposure for unauthorized uses of Joltid's  
28 Copyrighted Works, eBay disclosed in an SEC filing a summary of the details surrounding the U.K.

1 Litigation and stated that "if Skype was to lose the right to use the Joltid software as the result of the  
 2 litigation, and if alternative software was not available, Skype would be severely and adversely  
 3 affected and the continued operation of Skype's business as currently conducted would likely not be  
 4 possible." eBay has further publicly described the potential loss of use of Joltid's Copyrighted  
 5 Works as "devastating."

6 52. Although eBay was actually and constructively aware that the Skype Companies and  
 7 the users of the Skype application continued to infringe Joltid's Copyrighted Works, eBay failed to  
 8 cease all infringing activities and use, reproduction, and promotion of Joltid's Copyrighted Works,  
 9 as part of Skype's telephony software application, following Joltid's termination of the License  
 10 Agreement. In fact, eBay continued to promote and to allow the infringements of Joltid's  
 11 Copyrighted Works in order to realize eBay's goals of generating extraordinary revenue from the  
 12 Skype telephony software application.

13 **THE 2009 SALE OF A 65% CONTROLLING INTEREST IN SKYPE**  
 14 **TO AN INVESTOR GROUP**

15 53. On September 1, 2009, in press releases from Menlo Park, California, the Skype  
 16 Companies and an investor group led by Silver Lake Partners announced that they had negotiated  
 17 and executed and/or caused to be executed a definitive agreement ("Purchase Agreement") in which  
 18 the investor group purchased a 65 percent controlling interest in the Skype Companies from  
 19 Defendant eBay, Inc.

20 54. According to public information, the conditions of the Skype 2009 Purchase  
 21 Agreement includes covenants and conditions that the purchasers must continue operating Skype in  
 22 the normal course of business, consistent with Skype's past practices.

23 55. Skype's normal business operations and past practices include reproducing, without  
 24 permission, Joltid's Copyrighted Works and unauthorized derivative works based upon Joltid's  
 25 Copyrighted Works. Those normal business operations and past practices also include distributing,  
 26 without permission, Joltid's Copyrighted Works and unauthorized derivative works based upon  
 27 Joltid's Copyrighted Works through the Skype telephony software application to new and registered  
 28 Skype users. Additionally, upon information and belief, Skype, in the normal course of its business,



1 will also impermissibly continue to modify and prepare unauthorized derivative works of Joltid's  
2 Copyrighted Works.

3 56. Members of the investor group purchasing a 65% controlling interest in Skype from  
4 Defendant eBay pursuant to the Skype 2009 Purchase Agreement includes the following named  
5 investors: Silver Lake Partners, Index Ventures, Andreessen Horowitz, and the Canada Pension  
6 Plan Investment Board.

7 57. Upon information and belief each of Silver Lake Partners, Index Ventures,  
8 Andreessen Horowitz and the Canada Pension Plan Investment Board contributed the funds and  
9 coordinated and participated in the negotiations, as well as negotiated, executed and/or caused to be  
10 executed the Skype 2009 Purchase Agreement, collectively assuming a 65% controlling interest in  
11 Skype.

12 58. Upon information and belief, Defendant Volpi is also an investor and is the person  
13 who conceived and organized the transaction resulting in the Skype 2009 Purchase Agreement.  
14 Volpi took these acts, notwithstanding the fact that he personally knew since on or about March 12,  
15 2009 that Joltid had terminated the License Agreement and that, as a consequence, from and after  
16 March 12, 2009, the Skype Companies and each of its existing and new users of the Skype  
17 application infringed Joltid's Copyrighted Works.

18 59. The Skype 2009 Purchase Agreement reportedly valued Skype at a total of  
19 \$2.75 billion dollars. eBay sold the 65% controlling interest in the Skype Companies to the investor  
20 group for approximately \$1.9 billion dollars in cash, with a note from the buyers in the principal  
21 amount of \$125 million dollars.

22 60. Following the closing of the Skype 2009 Purchase Agreement, Defendant eBay, Inc.  
23 will retain a 35% equity interest in the Skype Companies.

24 61. Upon information and belief, although Defendant eBay will retain a minority equity  
25 interest of 35% in the Skype Companies, eBay will continue to jointly exercise management  
26 authority, control and direction over Skype in coordination with the investors group and reap great  
27 financial benefits from Skype's unauthorized and infringing uses of Plaintiff's Copyrighted Works.  
28 An eBay press release quoted John Donahoe, eBay's President and Chief Executive Officer, as

1 stating that the sale of the Skype Companies "achieves our [eBay's] goal of delivering short- and  
 2 long-term value to eBay and its stockholders, without the possible delays and market risk of an IPO .  
 3 . . . Selling Skype now at this great valuation, while retaining an equity stake, makes sense for the  
 4 company." The same press release quotes Mr. Donahoe as stating, on eBay's behalf, that the Skype  
 5 2009 Purchase Agreement "is a great deal, unlocking both immediate and long-term value for eBay  
 6 and tremendous potential for Skype . . . We've acted decisively on a deal that delivers a high  
 7 valuation, gives us significant cash up-front and lets us retain a meaningful minority stake with  
 8 talented partners."

9 62. The Defendant investors and eBay have a collective interest in Skype's continued and  
 10 additional infringing and unauthorized use of Joltid's Copyrighted Works. Revenue generated for  
 11 the benefit of eBay and the investor group is directly tied to increasing the number of Skype users  
 12 and potential users who are drawn to Skype's website to download and use Skype's telephony  
 13 software application (including Joltid's Copyrighted Works). Egon Durban, managing director at  
 14 Silver Lake, is quoted in a press release as stating that "Skype is an innovative, next-generation  
 15 company that has changed how people and businesses communicate with each other. This Skype  
 16 2009 sale transaction benefits all parties involved and will allow Skype the opportunity to accelerate  
 17 the growth of its business by harnessing the deep technological and company development expertise  
 18 that resides within the investor group. Josh Silverman has done a strong job leading the company  
 19 and we look forward to working with Josh and his team to grow the Skype franchise."

#### 20 **THE DEFENDANT INVESTORS' ACTIVELY CONTROL**

#### 21 **THE SKYPE COMPANIES**

22 63. The Defendant investors have, as a result of the Skype 2009 Purchase Agreement,  
 23 assumed a 65% controlling interest in Skype and, pending closing of the transaction, have required  
 24 that the Skype Companies continue the unauthorized uses of Joltid's Copyrighted Works. The  
 25 Defendant investors funded the cash portion of the transaction and the Defendant investors are now  
 26 directing and controlling relevant operations of the Skype Companies, in accordance with the  
 27 provisions of the Purchase Agreement. The Defendant investors operate the Skype Companies in  
 28 concert with Defendant eBay, until formal closing, with the collective goal and interest of increasing

1 Skype users and increasing the revenue derived from that use.

2         64. Each of the Defendant investors has the experience, skill and human resources to  
3 actively control the Skype Companies.

4             a. Silver Lake, a Defendant investor and a named party to the Skype 2009  
5 Purchase Agreement, is a leading investment firm focused on large scale  
6 investments in technology, technology enabled, and related growth industries.  
7 Press releases indicate that its mission is to function as a value-added partner  
8 to the management teams of the world's leading technology franchises. Silver  
9 Lake is an experienced investor with a portfolio which includes or has  
10 included technology industry leaders such as Ameritrade, Avago, Business  
11 Objects, Gartner, Instinet, Intelsat, NASDAQ, Sabre/Travelocity, Seagate  
12 Technology, SunGard Data Systems and UGS.

13             b. Index Ventures, another Defendant investor, and also a named party to the  
14 Skype 2009 Purchase Agreement, is a leading venture capital firm active in  
15 technology, biotech and clean technology venture investing since 1996.  
16 Index Ventures is dedicated to helping top entrepreneurial teams in the  
17 Information Technology and Life Science sectors build their companies into  
18 market defining global leaders. The firm has offices in Geneva, London and  
19 Jersey and focuses on investments from seed through growth stage  
20 companies. Index Venture's portfolio includes Lehigh Technologies Inc.,  
21 Playfish and Weatherbill and exits of note include MySQL (the world's most  
22 popular open source database recently acquired by Sun), Last.fm (the world's  
23 largest social music platform, recently acquired by CBS) and BioXell (BIOX,  
24 floated on the SWX in 2007).

25             c. Andreessen Horowitz is another Defendant investor and a named party to the  
26 Skype 2009 Purchase Agreement. It is a 300 million dollar venture fund,  
27 established in June 2009 by entrepreneurs, experienced investors and  
28 engineers, Marc Andreessen and Ben Horowitz. Mr. Andreessen and Mr.

Horowitz are the general partners of Andreessen Horowitz and Mr. Andreessen is also a member of Defendant eBay's board of directors. Andreessen Horowitz reportedly contributed \$50 million dollars to the purchase of the Skype Companies.

- d. The Canada Pension Plan Investment Board ("CPP Investment Board") is another Defendant investor and party to the Skype 2009 Purchase Agreement. The CPP Investment Board describes itself as a professional investment management organization that invests the funds not needed by the Canada Pension Plan to pay current benefits on behalf of 17 million Canadian contributors and beneficiaries. To build a diversified portfolio of assets for the Canada Pension Plan, the CPP Investment Board invests in public equities, private equities, real estate, inflation-linked bonds, infrastructure and fixed income instruments. As of June 30, 2009, the Canada Pension Plan fund totaled \$116.6 billion dollars.
- e. Volpi is also a Defendant investor and is jointly and severally liable, along with the other Defendant investors and eBay, for the direct infringement of Joltid's Copyrighted Works by both the Skype Companies, as well as by Skype's users.

65. Since July, 2009, Volpi has acted as a partner of Index Ventures, a named party to the Skype 2009 Purchase Agreement. Prior to joining Index Ventures as a partner, Volpi served on the board of directors of Skype and, as a result, gained familiarity with Skype's telephony software application, as well as Skype's infringing and unauthorized uses of Joltid's Copyrighted Works, including the fact that (since at least March 12, 2009) the Skype Companies and each of the existing and new users of the Skype application have been infringing Joltid's Copyrighted Works. Despite knowing the Skype Companies' role in infringing and/or facilitating the infringement of Joltid's Copyrighted Works on a massive worldwide scale, Volpi elected to take over control of the Skype Companies. Volpi openly discussed his personal goal of taking over Skype, telling a reporter from the New York Times that he implemented a plan to achieve this goal shortly after joining Index

1 Ventures as a partner in July 2009.

2 66. Exploiting his personal and professional relationships, Volpi was ultimately  
3 successful in single-handedly orchestrating the multi-billion dollar transaction, realizing his personal  
4 goal of taking over Skype. Volpi sold his Skype Companies acquisition plan to other influential  
5 individuals, including Danny Rimer, another partner at Index Ventures. Once Volpi had secured  
6 Mr. Rimer's support and, undoubtedly, the millions of dollars in Index Ventures funding that would  
7 follow, Volpi then contacted and/or directed the contact of other Defendant investors, including  
8 Silver Lake Partners and Andreessen Horowitz.

9 67. Upon information and belief, Volpi had a controlling and integral role in the Skype  
10 2009 sale transaction, directing, influencing and negotiating the Skype 2009 Purchase Agreement,  
11 including the covenants and conditions in the agreements which require that the Defendant investor  
12 group must continue operating Skype in the normal course of business, consistent with the Skype  
13 Companies' past practices. The London Times describes Volpi as the "mastermind" behind the  
14 transaction and stated in a headline that "Mike Volpi Leads Bidders For Skype Takeover".

15 68. Upon information and belief, Volpi maintains an influential role over the remaining  
16 members of the Defendant investor group and the related operational control, management and  
17 direction of the Skype Companies, and arrangements exist by which he will personally benefit  
18 pecuniarily from those continued, infringing operations.

19 69. Plaintiff is informed and believes that each of the Defendant investors conducted  
20 and/or caused to be conducted extensive due diligence into Skype's business activities, litigations  
21 and licensing agreements in preparation for its almost three billion dollar acquisition of Skype. As a  
22 result, each of the Defendant investors was at all times aware that the License Agreement between  
23 Joltid and Skype had been terminated and was further aware of Skype's past and continuing  
24 unauthorized and infringing uses of Joltid's Copyrighted Works.

25 70. Although each of the Defendant investors was actually and constructively aware of  
26 the continuing infringement of Joltid's Copyrighted Works, the Defendant investors failed to cause  
27 the Skype Companies to cease infringing Joltid's Copyrighted Works and prevent the availability of  
28 Joltid's Copyrighted Works for download as part of Skype's telephony software application. In fact,

1 the Defendant investor group continued with the acquisition, investing over two billion dollars in  
 2 order to realize their goals of generating extraordinary revenue from Skype's telephony software  
 3 application, revenue that would not have been possible without the unauthorized infringement of  
 4 Joltid's Copyrighted Works.

5 71. The investor group may include additional and as yet unknown and unnamed  
 6 members who directed, controlled and/or materially contributed to the unauthorized use and direct  
 7 infringement of Joltid's Copyrighted Works. These unnamed persons may also include investors  
 8 who acquired or retained a direct financial interest in the infringement of Joltid's Copyrighted  
 9 Works by the Skype Companies and by users of the Skype application. Plaintiff expects that,  
 10 following discovery, Plaintiff will be able to supplement this pleading with the additional  
 11 information. Accordingly, Plaintiff currently includes these additional defendants as DOES 1-10.

12 72. At all times since September 1, 2009, the Defendant investor group and eBay have  
 13 exercised operational control over the Skype Companies' unauthorized reproduction, distribution,  
 14 preparation of derivative works and/or modifications of Joltid's Copyrighted Works. On September  
 15 2, 2009, Joltid sent cease and desist letters to each of the Skype Companies, eBay and every  
 16 Defendant investor advising them of their liability and exposure for the direct infringement of  
 17 Joltid's Copyrighted Works by both Skype and Skype's users.

#### 18 **FIRST CLAIM FOR RELIEF**

##### 19 **Direct Copyright Infringement (Reproduction) Against The Skype Companies**

20 73. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1-72  
 21 of this Complaint as though fully set forth herein.

22 74. The Skype Companies, without authority, are making, causing to be made, and  
 23 purporting to authorize the making of unauthorized copies of Plaintiff's Copyrighted Works.  
 24 Additionally, the Skype Companies prepared derivative works based upon Joltid's Copyrighted  
 25 Works by modifying Joltid's Copyrighted Works without permission and reproduced and distributed  
 26 those unauthorized derivative works. Further, the Skype Companies continue to reproduce and  
 27 distribute the unauthorized derivative works. Defendants' conduct constitutes direct infringement of  
 28 Plaintiff's exclusive rights under the Copyright Act to reproduce their copyrighted works. 17 U.S.C.



1 § 106(1).

2 75. Defendants' acts of infringement have been willful, intentional, and purposeful, in  
3 disregard of and indifferent to the rights of Plaintiff.

4 76. The Skype Companies have continued to infringe Joltid's Copyrighted Works on a  
5 massive scale. Each day that the Skype Companies continue to make available the Skype Internet  
6 telephony software for download, Skype users download Joltid's Copyrighted Works approximately  
7 six times per second. Based on conservative estimates, Joltid believes that its Copyrighted Works  
8 are infringed in the United States at least 100,000 times a day through these unauthorized actions.

9 77. As a direct and proximate result of Defendants' infringement of Plaintiff's  
10 Copyrighted Works and exclusive rights under the Copyright Act, Plaintiff is entitled to the  
11 maximum statutory damages pursuant to 17 U.S.C. § 504(c) up to \$150,000 for each act of direct  
12 infringement by the Skype Companies.

13 78. Alternatively, at Plaintiff's election, pursuant to 17 U.S.C. § 504(b), Plaintiff shall be  
14 entitled to its actual damages plus Defendants' profits from infringement, as will be proven at trial.

15 79. Plaintiff is entitled to its costs, including reasonable attorneys' fees, pursuant to  
16 17 U.S.C. § 505.

17 80. Defendants' conduct is causing and, unless enjoined by this Court, will continue to  
18 cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money.  
19 Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a  
20 permanent injunction requiring Defendants to employ reasonable methodologies to prevent or limit  
21 infringement of Plaintiff's Copyrighted Works and exclusive rights under the Copyright Act.

## 22 **SECOND CLAIM FOR RELIEF**

### 23 **Direct Copyright Infringement (Preparation of Derivative Works)**

#### 24 **Against the Skype Companies**

25 81. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1-80  
26 of this Complaint as though fully set forth herein.

27 82. The Defendant Skype Companies, without the permission or consent of Plaintiff, and  
28 without authority, have modified and continue to modify Plaintiff's Copyrighted Works and prepare

1 derivative works. Defendants' conduct constitutes direct infringement of Plaintiffs' exclusive rights  
2 under the Copyright Act to prepare derivative works based on Plaintiff's own Copyrighted Works.  
3 17 U.S.C. § 106(2).

4 83. Defendants' acts of infringement have been willful, intentional, and purposeful, in  
5 disregard of and indifferent to the rights of Plaintiff.

6 84. The Skype Companies have continued to infringe Joltid's Copyrighted Works on a  
7 massive scale. Each day that the Skype Companies continue to make available their Internet  
8 telephone software for download, Skype users download Joltid's Copyrighted Works approximately  
9 six times per second. Based on conservative estimates, Joltid believes that its Copyrighted Works  
10 are infringed in the United States at least 100,000 times a day through these unauthorized actions.

11 85. As a direct and proximate result of Defendant's infringement of Plaintiff's  
12 Copyrighted Works and exclusive rights under copyright, Plaintiff is entitled to the maximum  
13 statutory damages pursuant to 17 U.S.C. § 504(c) up to \$150,000 for each act of direct infringement  
14 by the Skype Companies or such other amounts as may be proper under 17 U.S.C. § 504(c).

15 86. Alternatively, at Plaintiff's election, pursuant to 17 U.S.C. § 504(b), Plaintiff is  
16 entitled to its actual damages plus Defendants' profits from infringement, as will be proven at trial.

17 87. Plaintiff is entitled to its costs, including reasonable attorneys' fees, pursuant to 17  
18 U.S.C. § 505.

19 88. Defendants' conduct is causing and, unless enjoined by this Court, will continue to  
20 cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money.  
21 Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a  
22 permanent injunction requiring the Defendant Skype Companies to employ reasonable  
23 methodologies to prevent or limit infringement of Plaintiff's Copyrighted Works and exclusive  
24 rights under the Copyright Act.

### 25 **THIRD CLAIM FOR RELIEF**

#### 26 **Direct Copyright Infringement (Distribution) Against the Skype Companies**

27 89. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1-88  
28 of this Complaint as though fully set forth herein.

1           90.     The Defendant Skype Companies, without the permission or consent of Plaintiff, and  
2 without authority, are distributing Plaintiff's Copyrighted Works and derivative works based on  
3 Plaintiff's Copyrighted Works to the public by making available to Skype users copies of the  
4 Copyrighted Works maintained on Skype's website. Defendant's conduct constitutes direct  
5 infringement of Plaintiff's exclusive rights under the Copyright Act to distribute its Copyrighted  
6 Works to the public. 17 U.S.C. § 106(3),

7           91.     The Skype Companies' acts of infringement have been willful, intentional, and  
8 purposeful, in disregard of and indifferent to the rights of Plaintiff.

9           92.     The Skype Companies have continued to infringe Joltid's Copyrighted Works on a  
10 massive scale. Each day that the Skype Companies continue to make available its Internet telephone  
11 software for download, Skype users download Joltid's Copyrighted Works approximately six times  
12 per second. Based on conservative estimates, Joltid believes that its Copyrighted Works are  
13 infringed in the United States at least 100,000 times a day through these unauthorized actions.

14           93.     As a direct and proximate result of the Skype Companies' infringement of Plaintiff's  
15 Copyrighted Works and exclusive rights under the Copyright Act, Plaintiff is entitled to the  
16 maximum statutory damages pursuant to 17 U.S.C. § 504(c) up to \$150,000 for each act of direct  
17 infringement by the Skype Companies or such other amounts as may be proper under 17 U.S.C. §  
18 504(c).

19           94.     Alternatively, at Plaintiff's election, pursuant to 17 U.S.C. § 504(b), Plaintiff is  
20 entitled to its actual damages plus Defendants' profits from infringement, as will be proven at trial.

21           95.     Plaintiff is entitled to its costs, including reasonable attorneys' fees, pursuant to 17  
22 U.S.C. § 505.

23           96.     Defendants' conduct is causing and, unless enjoined by this Court, will continue to  
24 cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money.  
25 Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a  
26 permanent injunction requiring Defendants' to employ reasonable methodologies to prevent or limit  
27 infringement of Plaintiff's Copyrighted Works and exclusive rights under the Copyright Act.

28                   **FOURTH CLAIM FOR RELIEF**

**Inducement of Copyright Infringement Against All Defendants**

97. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1-96 of this Complaint as though fully set forth herein.

98. Skype users have directly infringed and are infringing Plaintiff's rights in its Copyrighted Works by, *inter alia*, downloading infringing copies of Plaintiff's Copyrighted Works and/or derivative works based upon the Copyrighted Works from Skype's website and reproducing and/or distributing copies of Plaintiff's Copyrighted Works or derivative works based upon the Copyrighted Works. Skype users are therefore directly infringing Plaintiff's exclusive rights of reproduction and distribution under 17 U.S.C. § 106(1) and (3).

99. Defendants are liable under the Copyright Act for inducing the infringing acts of Skype users.

100. At all times since at least 2003, the Skype Companies have promoted Skype's telephony software application by promoting its use and encouraging and facilitating the download of Skype's telephony software (including Plaintiff's Copyrighted Works and/or derivative works) by Skype users. Since Joltid terminated the License Agreement in 2009, their clear expression and other affirmative steps, the Skype Companies have unlawfully induced and fostered copyright infringement by Skype users.

101. At all times since at least 2005, the Skype Companies and/or eBay have promoted the Skype telephony software application by promoting its use and encouraging and facilitating its download by Skype users. Since Joltid terminated the License Agreement in 2007, by their clear expression and other affirmative steps, the Skype Companies and/or eBay have been unlawfully inducing and fostering copyright infringement by Skype users.

102. At all times since at least September 1, 2009, Skype, eBay, and/or each of the Defendant investors have also promoted Skype's telephony software application known to infringe Plaintiff's Copyrighted Works and/or derivative works based on Plaintiff's Copyrighted Works, by promoting its use and encouraging and facilitating its download by Skype users. By their clear expression and other affirmative steps, the Skype Companies, eBay, and/or each of the Defendant investors are unlawfully inducing and fostering copyright infringement by Skype users.

1           103. All Defendants are fully aware that Plaintiff's Copyrighted Works and derivative  
2 works based on Plaintiff's Copyrighted Works are protected and the property of Plaintiff and all  
3 Defendants are equally aware that Skype users downloading and using the Skype telephony software  
4 are unlawfully reproducing and distributing Plaintiff's Copyrighted Works and derivative works.  
5 Defendants intend, encourage and induce Skype users to download the Skype telephony software in  
6 spite of the resulting unauthorized infringement.

7           104. Defendants' acts of infringement have been willful, intentional and purposeful, in  
8 disregard of and indifferent to the rights of Plaintiff.

9           105. Since termination of the License Agreement, infringement of Joltid's Copyrighted  
10 Works has continued on a massive scale. Each day that the Skype Companies continue to make  
11 available its Internet telephone software for download, Skype users download Joltid's Copyrighted  
12 Works approximately six times per second. Based on conservative estimates, Joltid believes that its  
13 Copyrighted Works are infringed in the United States at least 100,000 times a day through  
14 Defendants' unauthorized actions. Indeed, hundreds of thousands of Skype users have directly  
15 infringing Joltid's exclusive rights under the Copyright Act by downloading and using the Skype  
16 telephony software application (including Joltid's Copyrighted Works) since the effective dates of  
17 registration of Joltid's Copyrighted Works.

18           106. As a direct and proximate result of the Skype users' direct infringement of Plaintiff's  
19 Copyrighted Works and exclusive rights under the Copyright Act, Defendants are jointly and  
20 severally liable with the Skype users up to the maximum statutory damage pursuant to 17 U.S.C. §  
21 504(c) of \$150,000 for each direct infringement by each Skype user of each Copyrighted Work  
22 infringed, where such direct infringement took place on or after the effective date of registration of  
23 Joltid's Copyrighted Works. Alternatively, at Plaintiff's election, pursuant to 17 U.S.C. § 504(b),  
24 Plaintiff is entitled to its actual damages plus Defendants' profits from all infringements occurring  
25 on or after the effective date of registration of Joltid's Copyrighted Works, as will be proven at trial.

26           107. Plaintiff is entitled to its actual damages plus Defendants' profits from all  
27 infringements occurring prior to the effective date of registration of Joltid's Copyrighted Works, as  
28 will be proven at trial.

1 108. Plaintiff is entitled to its costs, including reasonable attorneys' fees, pursuant to 17  
2 U.S.C. § 505.

3 109. Defendants' conduct is causing and, unless enjoined by this Court, will continue to  
4 cause Plaintiff's great and irreparable injury that cannot be fully compensated or measured in  
5 money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is  
6 entitled to a permanent injunction requiring Defendants to employ reasonable methodologies to  
7 prevent or limit infringement of Plaintiff's Copyrighted Works.

### 8 **FIFTH CLAIM FOR RELIEF**

#### 9 **Contributory Copyright Infringement Against All Defendants**

10 110. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1-109  
11 of this Complaint as though fully set forth herein.

12 111. Skype users have directly infringed and are infringing Plaintiff's rights in its  
13 Copyrighted Works by, *inter alia*, downloading infringing copies of Plaintiff's Copyrighted Works  
14 and/or derivative works based upon the Copyrighted Works from Skype's website and reproducing  
15 and/or distributing copies of Plaintiff's Copyrighted Works and derivative works based upon the  
16 Copyrighted Works. Skype's users are therefore directly infringing Plaintiff's exclusive rights of  
17 reproduction and distribution under 17 U.S.C. § 106(1) and (3).

18 112. At all times since Joltid terminated the License Agreement, the Skype Companies  
19 have had the actual and constructive knowledge that its users directly infringe Plaintiff's  
20 Copyrighted Works. Furthermore, the Skype Companies have materially assisted its users in  
21 directly infringing Plaintiff's Copyrighted Works by making Skype's telephony software application  
22 (which includes Plaintiff's Copyrighted Works) available to Skype's users and facilitating the  
23 downloading of Skype's telephony software by Skype's users.

24 113. At all times since Joltid terminated the License Agreement, Defendant eBay has had  
25 the actual and constructive knowledge that Skype's users directly infringe Plaintiff's Copyrighted  
26 Works and eBay has materially assisted Skype's users to directly infringe Plaintiff's Copyrighted  
27 Works and derivative works prepared from the Copyrighted Works by promoting and facilitating the  
28 download and distribution of Skype's telephony software application and attempting to increase the



1 number of Skype users.

2 114. At all times since on or about September 1, 2009, the Defendants in the investor  
3 group have had the actual and constructive knowledge that Skype's users directly infringe Joltid's  
4 Copyrighted Works and derivative works prepared from the Copyrighted Works and have materially  
5 assisted Skype's users to infringe Joltid's Copyrighted Works by promoting and facilitating the  
6 download and distribution of Skype's telephony software application and attempting to increase the  
7 number of Skype users.

8 115. All Defendants have actual and constructive knowledge that Skype users are  
9 employing the Skype website to copy and/or distribute Joltid's Copyrighted Works.

10 116. Acting with this actual and constructive knowledge, Defendants enable, facilitate and  
11 materially contribute to each of the Skype users' direct copyright infringement of Plaintiff's  
12 Copyrighted Works, which could not occur without Defendants' enablement.

13 117. Defendants' acts of infringement have been willful, intentional, and purposeful, in  
14 disregard of and indifferent to the rights of Plaintiff.

15 118. Since termination of the License Agreement, infringement of Joltid's Copyrighted  
16 Works has continued on a massive scale. Each day that Skype continues to make available its  
17 Internet telephone software for download, Skype users download Joltid's Copyrighted Works  
18 approximately six times per second. Based on conservative estimates, Joltid believes that its  
19 Copyrighted Works are infringed in the United States at least 100,000 times a day through  
20 Defendants' unauthorized actions. Indeed, hundreds of thousands of Skype users have directly  
21 infringing Joltid's exclusive rights under the Copyright Act by downloading and using the Skype  
22 telephony software application (including Joltid's Copyrighted Works) since the effective dates of  
23 registration of Joltid's Copyrighted Works.

24 119. As a direct and proximate result of the Skype users' direct infringement of Plaintiff's  
25 Copyrighted Works and exclusive rights under the Copyright Act, Defendants are jointly and  
26 severally liable with the Skype users for maximum statutory damage pursuant to 17 U.S.C. § 504(c)  
27 up to \$150,000 for each direct infringement by each Skype user of each Copyrighted Work  
28 infringed, where such direct infringement took place on or after the effective date of registration of

1 Joltid's Copyrighted Works. Alternatively, at Plaintiff's election, pursuant to 17 U.S.C. § 504(b),  
 2 Plaintiff is entitled to its actual damages plus Defendants' profits from all infringements occurring  
 3 on or after the effective date of registration of Joltid's Copyrighted Works, as will be proven at trial.

4 120. Plaintiff is entitled to its actual damages plus Defendants' profits from all  
 5 infringements occurring prior to the effective date of registration of Joltid's Copyrighted Works, as  
 6 will be proven at trial.

7 121. Plaintiff is entitled to its costs, including reasonable attorneys' fees, pursuant to  
 8 17 U.S.C. § 505.

9 122. Defendants' conduct is causing, and unless enjoined by this Court, will continue to  
 10 cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money.  
 11 Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a  
 12 permanent injunction requiring Defendants to employ reasonable methodologies to prevent or limit  
 13 infringement of Plaintiff's Copyrighted Works.

#### 14 **SIXTH CLAIM FOR RELIEF**

##### 15 **Vicarious Copyright Infringement Against All Defendants**

16 123. Plaintiff incorporates herein by reference the allegations set forth in paragraphs 1-122  
 17 of this Complaint as though fully set forth herein.

18 124. Skype users have directly infringed and are directly infringing Plaintiff's rights in its  
 19 Copyrighted Works by, *inter alia*, downloading infringing copies of Plaintiff's Copyrighted Works  
 20 and/or derivative works based upon Plaintiff's Copyrighted Works from Skype's website and  
 21 reproducing and/or distributing copies of Plaintiff's Copyrighted Works, including derivative works.  
 22 Skype's users are therefore directly infringing Plaintiffs' exclusive rights of reproduction and  
 23 distribution under 17 U.S.C. § 106(1) and (3).

24 125. At all times, the Skype Companies have significantly and directly benefited from the  
 25 widespread infringement by its users. Skype's telephony software (which includes Plaintiffs'  
 26 Copyrighted Works), acts as a substantial draw, attracting users to Skype's websites and increasing  
 27 the number of users who use Skype's services. Skype derives substantial revenue tied directly and  
 28 indirectly to Skype's telephony software application (which includes Plaintiff's Copyrighted

1 Works).

2 126. At all times relevant to this action, Defendant eBay maintained a direct financial  
3 interest in the unauthorized and infringing uses of Joltid's Copyrighted Works. The greater the  
4 revenue generated by such use (all of which is directly or indirectly attributable to Skype's  
5 telephony software and the unauthorized and infringing uses of Joltid's Copyrighted Works), the  
6 greater the financial gain realized by eBay, as Skype's sole shareholder, and later, as a significant  
7 shareholder of the Skype Companies.

8 127. At all times relevant to this claim, Defendant eBay maintained the right and ability to  
9 supervise Skype's unauthorized and infringing conduct, first as Skype's sole shareholder, and later,  
10 as a significant shareholder of Skype.

11 128. At all times since on or about September 1, 2009, the Defendant investors have  
12 maintained a direct financial interest in Skype's unauthorized and infringing uses of Joltid's  
13 Copyrighted Works. The greater the revenue generated by that use (all of which is directly or  
14 indirectly attributable to Skype's telephony software and the unauthorized and infringing use of  
15 Joltid's Copyrighted Works), the greater the individual financial gain realized by each of the  
16 Defendant investors.

17 129. At all times relevant to this action, the Defendant investors have maintained the right  
18 and ability to supervise Skype's unauthorized and infringing conduct in coordination with the Skype  
19 Companies and eBay. As a condition of the Skype 2009 Sale, the Defendant investors agreed to  
20 continue operating Skype in the normal course of business, which includes reproducing, without  
21 permission, Joltid's Copyrighted Works and unauthorized derivative works based upon Joltid's  
22 Copyrighted Works and distributing, without permission, Joltid's Copyrighted Works and  
23 unauthorized derivative works based upon Joltid's Copyrighted Works through the Skype Internet  
24 telephony software application to new and registered Skype users. Additionally, the Skype  
25 Companies, in the normal course of their business, will also impermissibly continue to modify and  
26 prepare unauthorized derivative works of one or both of Joltid's Copyrighted Works.

27 130. Defendants are vicariously liable for the infringing acts of Skype users. Defendants  
28 have both the right and the ability to supervise the Skype users' infringing conduct, and to prevent

1 Skype users from infringing Plaintiff's Copyrighted Works.

2 131. Defendants' acts of infringement have been willful, intentional, and purposeful, in  
3 disregard of and indifferent to the rights of Plaintiff.

4 132. Since termination of the License Agreement, infringement of Joltid's Copyrighted  
5 Works has continued on a massive scale. Each day that Skype continues to make available its  
6 Internet telephone software for download, Skype users download Joltid's Copyrighted Works  
7 approximately six times per second. Based on conservative estimates, Joltid believes that its  
8 Copyrighted Works are infringed in the United States at least 100,000 times a day through  
9 Defendants' unauthorized actions. Indeed, hundreds of thousands of Skype users have directly  
10 infringing Joltid's exclusive rights under the Copyright Act by downloading and using the Skype  
11 telephony software application (including Joltid's Copyrighted Works) since the effective dates of  
12 registration of Joltid's Copyrighted Works.

13 133. As a direct and proximate result of the Skype users' direct infringement of Plaintiff's  
14 Copyrighted Works and exclusive rights under the Copyright Act, Defendants are jointly and  
15 severally liable with the Skype users for maximum statutory damage pursuant to 17 U.S.C. § 504(c)  
16 up to \$150,000 for each direct infringement by each Skype user of each Copyrighted Work  
17 infringed, where such direct infringement took place on or after the effective date of registration of  
18 Joltid's Copyrighted Works. Alternatively, at Plaintiff's election, pursuant to 17 U.S.C. § 504(b),  
19 Plaintiff is entitled to its actual damages plus Defendants' profits from all infringements occurring  
20 on or after the effective date of registration of Joltid's Copyrighted Works, as will be proven at trial.

21 134. Plaintiff is entitled to its actual damages plus Defendants' profits from all  
22 infringements occurring prior to the effective date of registration of Joltid's Copyrighted Works, as  
23 will be proven at trial.

24 135. Plaintiff is entitled to its costs, including reasonable attorneys' fees, pursuant to  
25 17 U.S.C. § 505.

26 136. Defendants' conduct is causing, and unless enjoined by this Court, will continue to  
27 cause Plaintiff's great and irreparable injury that cannot fully be compensated or measured in  
28 money. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to

1 a permanent injunction requiring Defendants to employ reasonable methodologies to prevent or limit  
2 infringement of Plaintiff's Copyrighted Works.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff Joltid Limited prays for judgment against Defendants as follows:

5 (1) For a judicial determination and declaration that Defendant Skype has directly  
6 infringed, and continues to directly infringe Plaintiff's Copyrighted Works;

7 (2) For a judicial determination and declaration that each and every Defendant, including  
8 the Skype Companies, has induced, and continues to induce, the infringement of Plaintiff's  
9 Copyrighted Works;

10 (3) For a judicial determination and declaration that each and every Defendant, including  
11 the Skype Companies, has contributed to, and continues to contribute to, vicariously and  
12 or/contributorily, to the infringement of Plaintiff's Copyrighted Works;

13 (4) For a judicial determination and decree that each Defendants' infringement of  
14 Plaintiffs' Copyrighted Works has been and continues to be, willful and deliberate;

15 (5) For a permanent injunction requiring that each Defendant and its agents, servants,  
16 employees, officers, attorneys, successors, licensees, partners, and assigns, and all person acting in  
17 concert or participation with each or any of them cease directly or indirectly infringing, or causing,  
18 enabling, facilitating, encouraging, promoting and inducing or participating in the infringement of  
19 any of Plaintiff's Copyrighted Works or exclusive rights protected by the Copyright Act, whether  
20 now in existence or hereafter created;

21 (6) For statutory damages pursuant to 17 U.S.C. § 504(c). Alternatively, at Plaintiff's  
22 election, pursuant to 17 U.S.C. § 504(b), Plaintiff shall be entitled to actual damages plus  
23 Defendants' profits from infringement, as will be proven at trial.

24 (8) For Plaintiff's costs, including reasonable attorneys' fees pursuant to 17 U.S.C. §  
25 505,


26 (9) For pre and post-judgment interest according to law;

27 (10) For any such other and further relief as the Court may deem just and proper under the  
28 circumstances.

1 DATED: September 16, 2009

HENNIGAN, BENNETT & DORMAN LLP

2  
3 By:

  
Roderick G. Dorman  
Lawrence M. Hadley

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5 Attorneys for Plaintiff  
JOLTID LIMITED  
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HENNIGAN, BENNETT & DORMAN LLP  
LAWYERS  
LOS ANGELES, CALIFORNIA



**Demand for Jury Trial**

Plaintiff hereby demands a jury trial pursuant to Rule 38 of the Federal Rules of Civil Procedure as to all issues so triable.

DATED: September 16, 2009

HENNIGAN, BENNETT & DORMAN LLP

By: 

Roderick G. Dorman  
Lawrence M. Hadley

Attorneys for Plaintiff  
JOLTID LIMITED

HENNIGAN, BENNETT & DORMAN LLP  
LAWYERS  
LOS ANGELES, CALIFORNIA

## **EXHIBIT 1**

-----Original Message-----

From: Copyright Office [mailto:cop-rc@loc.gov]  
Sent: Tuesday, September 01, 2009 6:47 PM  
To: Tal Grinblat  
Subject: Acknowledgement of Receipt

THIS IS AN AUTOMATED EMAIL - DO NOT REPLY.

Thank you for submitting your registration claim using the electronic Copyright Office (eCO) System. This email confirms that your application and fee for the work Global Index Software was received on 09/01/2009. The following applies to registration claims only (not preregistrations):

The effective date of registration is established when the application, fee AND the material being registered have been received. If you have not yet sent the material to be registered, logon to eCO and click the blue case number associated with your claim in the Open Cases table, then do one of the following:

For digital uploads: Click the Upload Deposit button at the top of the Case Summary screen, then browse and select the file(s) you wish to upload. Note: only certain classes of works may be registered with digital deposits (See FAQs: <http://www.copyright.gov/eco/faq.html#eCO 1.4>).

For hardcopy submissions: Click the Send by Mail button at the top of the Case Summary screen, then click the Shipping Slip link that appears in the Attachments table. Print out and attach the shipping slip to the copy(ies) of your work. For multiple works, be sure to generate and attach separate shipping slips for each work.

You will be issued a paper certificate by mail after the registration has been completed. You may check the status of this claim via eCO using this number [1-237878231].

[THREAD ID: 1-3XPFSE]

United States Copyright Office

## **EXHIBIT 2**

-----Original Message-----

From: Copyright Office [mailto:cop-rc@loc.gov]

Sent: Tuesday, September 15, 2009 5:33 PM

To: Tal Grinblat

Subject: Acknowledgement of Receipt

THIS IS AN AUTOMATED EMAIL - DO NOT REPLY.

Thank you for submitting your registration claim using the electronic Copyright Office (eCO) System. This email confirms that your application and fee for the work Global Index Software (August 2007 Version) was received on 09/15/2009. The following applies to registration claims only (not preregistrations):

The effective date of registration is established when the application, fee AND the material being registered have been received. If you have not yet sent the material to be registered, logon to eCO and click the blue case number associated with your claim in the Open Cases table, then do one of the following:

For digital uploads: Click the Upload Deposit button at the top of the Case Summary screen, then browse and select the file(s) you wish to upload. Note: only certain classes of works may be registered with digital deposits (See FAQs: <http://www.copyright.gov/eco/faq.html#eCO 1.4>).

For hardcopy submissions: Click the Send by Mail button at the top of the Case Summary screen, then click the Shipping Slip link that appears in the Attachments table. Print out and attach the shipping slip to the copy(ies) of your work. For multiple works, be sure to generate and attach separate shipping slips for each work.

You will be issued a paper certificate by mail after the registration has been completed. You may check the status of this claim via eCO using this number [1-244799541].

[THREAD ID: 1-41UH1K]

United States Copyright Office